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(201) 857-5040

Attorneys for Defendants, Borough of Wallington, Witold Baginski and Sean Kudlacik

Plaintiff(s)

JOSEPH FEHL

vs.

Defendant(s)

BOROUGH OF WALLINGTON, WITOLD BAGINSKI, an individual and official capacity as Business Administrator of Wallington, SEAN KUDLACIK, BERGEN COUNTY PROSECUTOR'S OFFICE, JOHN AND JANE DOE 1-10

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

CIVIL ACTION NO. 2:17 cv 11462

(JLL-JAD)

ANSWER, CROSSCLAIMS, SEPARATE DEFENSES, REQUEST FOR DAMAGES, JURY DEMAND, DESIGNATION OF TRIAL COUNSEL, AND CERTIFICATION

Defendants, Borough of Wallington, Witold Baginski and Sean Kudlacik, by way of Answer to the Complaint filed herein, hereby says:

INTRODUCTION

1. These Defendants deny the allegations contained in this paragraph.

PARTIES

2. These Defendants have insufficient knowledge at this time upon which to form a belief as to the truth of the allegations contained in this paragraph, and leaves Plaintiff to his proofs.

3. These Defendants deny the allegations contained in this paragraph.

4. These Defendants deny the allegations contained in this paragraph.

5. These Defendants deny the allegations contained in this paragraph.

6. These Defendants have insufficient knowledge at this time upon which to form a belief as to the truth of the allegations contained in this paragraph, and leaves Plaintiff to his proofs.

7. These Defendants have insufficient knowledge at this time upon which to form a belief as to the truth of the allegations contained in this paragraph, and leaves Plaintiff to his proofs.

JURISDICTION AND VENUE

8. These Defendants have insufficient knowledge at this time upon which to form a belief as to the truth of the allegations contained in this paragraph, and leaves Plaintiff to his proofs.

9. These Defendants have insufficient knowledge at this time upon which to form a belief as to the truth of the allegations contained in this paragraph, and leaves Plaintiff to his proofs.

10. These Defendants deny the allegations contained in this paragraph.

11. These Defendants admit the allegations contained in this paragraph.

FACTUAL BACKGROUND

12. These Defendants have insufficient knowledge at this time upon which to form a belief as to the truth of the allegations contained in this paragraph, and leaves Plaintiff to his proofs.

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19. These Defendants deny the allegations contained in this paragraph.

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31. These Defendants deny the allegations contained in this paragraph.

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53. These Defendants deny the allegations contained in this paragraph.

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84. These Defendants deny the allegations contained in this paragraph.

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93. These Defendants deny the allegations contained in this paragraph.

94. These Defendants deny the allegations contained in this paragraph.

COUNT I

False Arrest

95. These Defendants repeat and reiterate each and every answer to the allegations contained in the previous paragraphs of the Complaint as if set forth herein at length and verbatim.

96. These Defendants deny the allegations contained in this paragraph.

97. These Defendants deny the allegations contained in this paragraph.

98. These Defendants deny the allegations contained in this paragraph.

99. These Defendants deny the allegations contained in this paragraph.

100. These Defendants deny the allegations contained in this paragraph.

COUNT II

False Arrest

101. These Defendants repeat and reiterate each and every answer to the allegations contained in the previous paragraphs of the Complaint as if set forth herein at length and verbatim.

102. These Defendants deny the allegations contained in this paragraph.

103. These Defendants deny the allegations contained in this paragraph.

104. These Defendants deny the allegations contained in this paragraph.

105. These Defendants deny the allegations contained in this paragraph.

106. These Defendants deny the allegations contained in this paragraph.

COUNT III

Malicious Prosecution

107. These Defendants repeat and reiterate each and every answer to the allegations contained in the previous paragraphs of the Complaint as if set forth herein at length and verbatim.

108. These Defendants deny the allegations contained in this paragraph.

109. These Defendants deny the allegations contained in this paragraph.

110. These Defendants deny the allegations contained in this paragraph.

111. These Defendants deny the allegations contained in this paragraph.

112. These Defendants deny the allegations contained in this paragraph.

113. These Defendants deny the allegations contained in this paragraph.

114. These Defendants deny the allegations contained in this paragraph.

COUNT IV

Malicious Prosecution

115. These Defendants repeat and reiterate each and every answer to the allegations contained in the previous paragraphs of the Complaint as if set forth herein at length and verbatim.

116. These Defendants deny the allegations contained in this paragraph.

117. These Defendants deny the allegations contained in this paragraph.

118. These Defendants deny the allegations contained in this paragraph.

119. These Defendants deny the allegations contained in this paragraph.

120. These Defendants deny the allegations contained in this paragraph.

121. These Defendants deny the allegations contained in this paragraph.

122. These Defendants deny the allegations contained in this paragraph.

COUNT V

Policy of Inadequate Training or Supervision

123. These Defendants repeat and reiterate each and every answer to the allegations contained in the previous paragraphs of the Complaint as if set forth herein at length and verbatim.

124-128. The allegations asserted in this count seemingly do not apply to these answering Defendants. If any of the allegations are directed towards these answering Defendants the allegations are hereby denied.

COUNT VI

Abuse of Process

129. These Defendants repeat and reiterate each and every answer to the allegations contained in the previous paragraphs of the Complaint as if set forth herein at length and verbatim.

130. These Defendants deny the allegations contained in this paragraph.

131. These Defendants deny the allegations contained in this paragraph.

132. These Defendants deny the allegations contained in this paragraph.

133. These Defendants deny the allegations contained in this paragraph.

COUNT VII

42 U.S.C. § 1983

134. These Defendants repeat and reiterate each and every answer to the allegations contained in the previous paragraphs of the Complaint as if set forth herein at length and verbatim.

135. These Defendants admit the allegations contained in this paragraph.

136. These Defendants admit/deny the allegations in part.

137. These Defendants deny the allegations contained in this paragraph.

138. These Defendants deny the allegations contained in this paragraph.

139. These Defendants deny the allegations contained in this paragraph.

140. These Defendants deny the allegations contained in this paragraph.

141. These Defendants deny the allegations contained in this paragraph.

142. These Defendants deny the allegations contained in this paragraph.

143. These Defendants deny the allegations contained in this paragraph.

COUNT VIII

New Jersey Civil Rights Act

144. These Defendants repeat and reiterate each and every answer to the allegations contained in the previous paragraphs of the Complaint as if set forth herein at length and verbatim.

145. These Defendants admit the allegations contained in this paragraph.

146. These Defendants deny the allegations contained in this paragraph.

147. These Defendants deny the allegations contained in this paragraph.

148. These Defendants deny the allegations contained in this paragraph.

149. These Defendants deny the allegations contained in this paragraph.

150. These Defendants deny the allegations contained in this paragraph.

151. These Defendants deny the allegations contained in this paragraph.

152. These Defendants deny the allegations contained in this paragraph.

COUNT VIII (incorrectly numbered in Complaint)

42 U.S.C. § 1983

Municipal Liability

153. These Defendants repeat and reiterate each and every answer to the allegations contained in the previous paragraphs of the Complaint as if set forth herein at length and verbatim.

154. These Defendants deny the allegations contained in this paragraph.

155. These Defendants deny the allegations contained in this paragraph.

156. These Defendants deny the allegations contained in this paragraph.

157. These Defendants deny the allegations contained in this paragraph.

158. These Defendants deny the allegations contained in this paragraph.

FIRST SEPARATE DEFENSE

Plaintiff's common law claims are barred by the application of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et. seq.

SECOND SEPARATE DEFENSE

Plaintiff cannot prove a violation by these Defendants of a clearly-established constitutional or statutory right.

THIRD SEPARATE DEFENSE

The conduct of these Defendants in the matter at bar was "objectively reasonable" under the Fourth and Fourteenth Amendment.

FOURTH SEPARATE DEFENSE

Plaintiff's causes of action, or some of them, are barred by the conduct of Plaintiff, which constitutes estoppels.

FIFTH SEPARATE DEFENSE

Plaintiff has failed to comply with the Notice of Claims provisions at N.J.S.A. 59:8-3 and 8-8 and, as a result thereof, is forever barred from making any state common law claims.

SIXTH SEPARATE DEFENSE

At all times relevant hereto Defendants acted within the scope of their lawful authority or apparent authority.

SEVENTH SEPARATE DEFENSE

These Defendants did not unlawfully or intentionally violate the civil rights of Plaintiff pursuant to the United States Constitution.

EIGHTH SEPARATE DEFENSE

These Defendants did not unlawfully or intentionally violate the civil rights of Plaintiff pursuant to the State of New Jersey.

NINTH SEPARATE DEFENSE

Even if Plaintiff can prove a violation by the Defendants of a clearly-established constitutional or statutory right, the Defendants are still entitled to qualified or good faith immunity because Defendants reasonably believed their conduct to be lawful. Good v. Pumpkin County, 891 F.2d 1087, 1092 (3rd Cir. 1989).

TENTH SEPARATE DEFENSE

The conduct of the Defendants in the matter at bar was “objectively reasonable” under the Fourth Amendment and under the New Jersey Constitution because Plaintiff was lawfully arrested and was lawfully detained on the basis of adequate and sufficient probable cause.

ELEVENTH SEPARATE DEFENSE

Any injuries or damages allegedly sustained by Plaintiff were caused solely through the acts of omission or commission of Plaintiff.

TWELFTH SEPARATE DEFENSE

At all times relevant hereto Defendants had acted within the scope of their lawful authority or apparent authority.

THIRTEENTH SEPARATE DEFENSE

Plaintiff's demand for punitive damages is barred since the Defendants actions were never willful, malicious or knowingly outside the scope of their office.

FOURTEENTH SEPARATE DEFENSE

These Defendants did not unlawfully retaliate against Plaintiff.

FIFTEENTH SEPARATE DEFENSE

These Defendants reserve the right to assert additional defenses upon completion of Discovery and Investigation.

CROSSCLAIM FOR CONTRIBUTION

Defendants, Borough of Wallington, Witold Baginski and Sean Kudlacik, demands contribution from Co-Defendants under the provisions of the New Jersey Joint Tortfeasors Contribution Act, N.J.S.A. 2A:53A-1 et seq., and the Comparative Negligence Act, N.J.S.A. 2A:15-1 et seq.

**CROSSCLAIM FOR COMMON LAW INDEMNIFICATION
AND REIMBURSEMENT**

While Defendants, Borough of Wallington, Witold Baginski and Sean Kudlacik, deny any negligence or legal duty in this case, in the event these Defendants are adjudged responsible, such liability would be solely vicarious, imputed, secondary or technical, while the negligence of Co-Defendants would be the active and primary basis for Plaintiff's injuries and damages.

WHEREFORE, Defendants demand judgment for common law indemnification against Co-Defendants, plus interest and costs of suit.

ANSWER TO CROSSCLAIMS

Defendants, Borough of Wallington, Witold Baginski and Sean Kulacik, herein and hereby deny each and every allegation of any crossclaim filed or to be filed in this matter, and leaves any and all Co-Defendants to their proofs.

REQUEST FOR DAMAGES

You are hereby requested and required to furnish the undersigned, within five (5) days a written statement of the amount of damages claimed in this action.

JURY DEMAND

Please take notice that demand is hereby made for trial by jury on all issues so triable.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, David T. Pfund, Esq. is designated as Trial Counsel.

CERTIFICATION

I hereby certify that: (1) the within matter in controversy is not the subject of any other action pending in any other court or arbitration; (2) no other action or arbitration proceeding is contemplated, and (3) no other necessary party to be joined in the subject litigation is presently known.

I hereby certify that the foregoing pleading has been electronically filed and served within the time provided by the court rules.

PFUND MCDONNELL, P.C.
Attorneys for Defendants,
Borough of Wallington, Witold Baginski and
Sean Kudlacik

By: s/ David T. Pfund (0025)
DAVID T. PFUND, ESQ.

Dated: April 10, 2018